

MF 97-3  
Tax Type: MOTOR FUEL TAX  
Issue: Off-Highway Usage Exemption

STATE OF ILLINOIS  
DEPARTMENT OF REVENUE  
OFFICE OF ADMINISTRATIVE HEARINGS  
SPRINGFIELD, ILLINOIS

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THE DEPARTMENT OF REVENUE	)	
OF THE STATE OF ILLINOIS	)	
	)	Docket #
v.	)	
	)	Account #
TAXPAYER	)	
Taxpayer	)	

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RECOMMENDATION FOR DISPOSITION

Synopsis:

The Illinois Department of Revenue (the "Department") issued a Notice of Tax Liability to TAXPAYER (the "Taxpayer") in the amount of \$220.20. The taxpayer timely protested the Notice of Tax Liability and requested a hearing. At the hearing held pursuant to the request, it was established that this matter should be resolved in favor of the Department.

Findings of Fact:

1. The *prima facie* case of the Department was established by the admission into evidence of Notice of Tax Liability for Motor Fuel Tax number XXXXX, issued to the taxpayer on December 27, 1996, in the amount of \$220.20 for tax and interest. The basis for the assessment was that:

You reported the following transactions on your Schedule SD as tax-free sales to ENVIROFIL OF ILLINOIS BU-21600. Your customer's capacity for storage is 1,000 gallons. The following sales exceeded this capacity by 1,000 gallons. Invoice date: 08/30/1996; Invoice no.: 2349; Gallons: 2,000. (Dept. Ex. No. 1)

2. The taxpayer admitted that they exceeded the storage capacity. (Tr. p. 8)

Conclusions of Law:

The *prima facie* case of the Department is established by the admission into evidence of the Notice of Tax Liability. Dep't of Revenue v. Vallee Foods, Inc., 129 Ill.App.3d 876 (1985). Once the Department has established the *prima facie* case of the correctness of the amount of tax due, the burden shifts to the taxpayer to produce competent evidence to show that the Department's computations are incorrect. A. R. Barnes & Co. v. Department of Revenue, 173 Ill.App.3d 826 (1st Dist. 1988)

The taxpayer reported to the Department, on his Schedule SD, as a tax free sale, a transaction with Envirofil of Illinois that occurred on August 30, 1996 for 2,000 gallons of tax-free motor fuel. The transaction was recorded on invoice number 2349. Envirofil of Illinois only had a capacity for storage of 1,000 gallons. Therefore, the taxpayer's invoice conveyed an excess of 1,000 gallons above the capacity. The taxpayer was assessed tax on the excess gallons.

The taxpayer offered no competent evidence regarding why the Notice of Tax Liability was incorrect. Therefore, the notice must be upheld in its entirety.

It is recommended that Notice of Tax Liability number XXXXX issued to the taxpayer on December 27, 1996 in the amount of \$220.20

plus applicable additional penalties and interest be upheld in its entirety.

Respectfully Submitted,

Barbara S. Rowe  
Administrative Law Judge  
April 9, 1997